IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO. 2760 OF 2004

1. Mahindra & Mahindra Workers Union,
2, Panchavati, S.V. Road,
Kandivali (West), Mumbai 400 067.

2. C.R. Achrekar,
(President),
Mahindra & Mahindra Workers Union,
2, Panchavati, S.V. Road,
Kandivali (West), Mumbai 400 067. ... Petitioners

Versus

1. Suresh J. Rane,
2. Prasad V. Apte,
3. V.E. Manjrekar,
4. A.H. Narvekar,
5. B.K. Jadhav,
6. N.R. Kamble,
7. M.B. Bhosale,
8. P.A. Gangadhar,
9. S.K. Bhurke,
10.N.R. Tawade,
11. N.T. Mohite,
12. P.D. Patade,
C/o. Suresh J. Rane,
L-7/6, Jal Ratan Deep
Co-op. Housing Society,
Bangur Nagar, M.G. Road,
Goregaon (West),
Mumbai 400 090.

13. M/s. Mahindra & Mahindra Ltd.
Automotive Sector,
Akurli Road, Kandivli (East),
Mumbai 400 101.

14. The General Manager -Operations,
M/s. Mahindra & Mahindra Ltd.
Automotive Sector, Akurli Road,
Kandivali (East),.
Mumbai 400 101.

15. Dwarkanath B. Dalvi,
1-B-9, Kesley Co-op. Housing Society,
Ram Nagar, S.V. Road, Mumbai 400 092.

16. S.D. Sawant,
Vice President,

17. Raju Lad,
Vice President,

18. Sachin Ahir,

General Secretary,

19. Mohan Singh,
Asstt. Secretary,

20. A.D. Mahulkar,
Asstt. Secretary,

21. Shri. Rajiv Sawhney,
Treasurer,

22. D.D. Khadapkar,
Asstt. Treasurer,
(Address of Sr. Nos. 16 to 22)
C/o. Mahindra & Mahindra Workers
Union, 2, Panchavati, S.V. Road,
Kandivali (West),
Mumbai 400 067.

23. T.M. Mantri, Member,
Industrial Court,
1st Floor, New Administrative Building,
Opp. Chetna College, Bandra (East),
Mumbai 400 051. ... Respondents

Mr. Shekhar Naphade with Mr. Kiran S. Bapat and Mr. V.P. Vaidya for Petitioner.

Mr. M.D. Nagle for Respondent Nos. 1 and 2.

Mr. J.P. Cama with Mr. R.N. Shah and Ms. Modi and Ms. Sonali Kunekar i/by H. Mehta & Co. for Respondent Nos. 13 and 14.

Mr. K.K. Singhvi, Senior Counsel with Mr. E.S. Kulkarni for Respondent No. 15.

WITH

WRIT PETITION NO. 2762 OF 2004

1. M/s. Mahindra & Mahindra Ltd.
Automotive Sector,
Akurli Road, Kandivli (East),
Mumbai 400 101. ...Petitioners

Versus

1. Suresh J. Rane,
2. Prasad V. Apte,
3. V.E. Manjrekar,
4. A.H. Narvekar,
5. B.K. Jadhav,
6. N.R. Kamble,

7. M.B. Bhosale,
8. P.A. Gangadhar,
9. S.K. Bhurke,
10.N.R. Tawade,
11. N.T. Mohite,
12. P.D. Patade,
C/o. Suresh J. Rane,
L-7/6, Jal Ratan Deep
Co-op. Housing Society,
Bangur Nagar, M.G. Road,
Goregaon (West),
Mumbai 400 090.

13. M/s. Mahindra & Mahindra Ltd.
2, Panchavati, S.V. Road,
Kandivali (West),
Mumbai 400 067.

14. C.R. Achrekar (President),
Mahindra & Mahindra Workers Union,
2, Panchavati, S.V. Road,
Kandivali (West), Mumbai 400 067.

15. Dwarkanath B. Dalvi,
1-B-9, Kesley Co-op. Housing Society,
Ram Nagar, S.V. Road, Mumbai 400 092.

16. S.D. Sawant,
Vice President,
17. Raju Lad,
ice President,
18. Sachin Ahir,
General Secretary,
19. Mohan Singh,
Asstt. Secretary,

20. A.D. Mahulkar,
Asstt. Secretary,

21. Shri. Rajiv Sawhney,
Treasurer,
22. D.D. Khadapkar,
Asstt. Treasurer,
(Address of Sr. Nos. 16 to 22)
C/o. Mahindra & Mahindra Workers
Union, 2, Panchavati, S.V. Road,
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Mumbai 400 067.

23. T.M. Mantri, Member,
Industrial Court,
1st Floor, New Administrative Building,
Opp. Chetna College, Bandra (East),
Mumbai 400 051. ... Respondents

Mr. J.P. Cama with Mr. R.N. Shah and Ms. Modi

and Ms. Sonali Kunekar i/by H. Mehta & Co. for Petitioner.
Mr. M.D. Nagle for Respondent Nos. 1 and 2.

Mr. Shekhar Naphade with Mr. Kiran S. Bapat and Mr. V.P. Vaidya for Respondent Nos. 13 and 14.

Mr. K.K. Singhvi Sr. Counsel with Mr. E.S. Kulkarni for Respondent No. 15.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 18, 2004

P.C. :

1. Rule. By consent heard forthwith.

2. Both the petitions are being disposed of by this common order as the challenges are more or less the same.

. Mr. Dalvi had taken out motion for relief by way of interim application which was marked as Exh. 5A. That application has not been pressed. Reference therefore,made by the Industrial Court in the order of 6.9.2004, while disposing of Dalvi's application UA2 and Reference UA5 seems to be typographical error.

3. Writ Petition NO. 2760 of 2004 has been preferred by the Union against the order dated 6.9.2004 below Exh. U in Complaint (ULP) No. 384 of 2004. This was an application by the Respondent Nos. 1 to 12 seeking directions against the Petitioners herein for conducting elections to the

Managing committee of Respondent No. 3 Union, by secret ballot. By the impugned order the learned Industrial Court was pleased to partly allow the relief. Directions came to be issued to Respondent Nos. 3 and 4 and others in the complaint to conduct elections by secret ballot procedure and under the control and supervision of the Investigating Officer of the Court as per Clause 24(a) and (b) of the Constitution of the Respondent Union i.e. first election of the delegates and then that of office bearers, managing committee members, in the annual general meeting, as per the provisions of the Constitution. It was further directed that the entire election process be completed within the period of two months from the date of the order. The other directions need not be adverted to.

. The other order under challenge is the order dated 6.7.2004 passed below Exh. UA2 and UA5. This was an application for interim relief moved by Respondent No. 8 in the complaint who is Respondent No. 15 in the petition. The relief sought for by the said respondent was against his expulsion by the Petitioner No. 1 herein as Member of Respondent No. 1. The Respondent No. 1 herein was directed to allow the Respondent No. 8, to continue as member whereby he would be able to take part in the elections of the Respondent No. 3

Union, as a candidate like other members.

4. Writ Petition (L) No. 2762 of 2004 is by the Management impugning the order below Exh. UA2 and UA 5 passed in complaint (ULP) No. 384 of 2004 on 6.9.2004. No specific directions have been issued against the petitioner herein. However, while disposing of the Applications, the learned Industrial Court has recorded a finding on the grievance of Respondent No. 15 to this petition that the Management and the Union were hands in gloves. In other words they were in collusion. It is on account of this, that the petition came to be filed.

5. In the course of the discussion, Mahindra & Mahindra Workers Union will be referred to as "Union". The Original Complainant Nos. 1 to 12 will be referred to as "Complainants". M/s. Mahindra & Mahindra Automotive Sector and the General Manager -Operations will be referred to as "Management" and Original Respondent No. 8 Dwarkanath B. Dalvi will be referred to as the "Expelled Member". The Original Respondent Nos. 4 to 12 will be adverted to as the "Office Bearers".

6. The complainants preferred the application against the Union Office Bearers and the Management invoking Items 5, 9 and 10 of Schedule IV of

M.R.T.U. & P.U.L.P. act. Item 5 reads as under :

"To show favouritism or partiality to one set of workers, regardless of merits"

Item 9 reads as under :

"Failure to implement award, settlement or agreement"

Item 10 reads as under :

"To indulge in act of force or violence"

. In the complaint, Prayer Clause (a) is to hold and declare that the Management Union or Office Bearers have engaged in unfair Labour Practice as set out above. Prayer Clause (b) is to direct respondent Nos. 1 to 12 to see that the they desist from engaging in unfair Labour Practice and prayer Clause (c) which is relevant reads as under :

"That to quash and set aside any settlement/Agreement/MOU/Minutes etc. which the Respondent Nos.1 and 2 and the Management of the Respondent No. 1 Company are likely to sign with the Respondent Nos. 3 to 12 in respect of the terms and conditions of employment of Respondent

no. 1 company."

Rest of the reliefs need not be adverted to.

. In the body of the complaint while invoking Item 9 of Schedule IV, the complainants alleged that the Management has increased production norms contrary to the settlement. The office bearers have ceased to be duly elected officer bearers of the Union. Inspite of request by the complainants, the office bearers have refused to take any action and on the contrary the Management is negotiating and or holding discussion with unauthorised persons. In so far as Item 10 is concerned, it is the contention of the complainants that they approached the Management and were threatened with dire consequences. Similarly the office bearers are also turning deaf ears to their grievances, problems and complaints. It is also averred that on account of the acts of the office bearers, there is serious danger to the employment of the complainant. It is also pointed out that inspite of approaching the office bears, the office bearers are unwilling to hold elections by following secret ballot method and the workman including complainant are forced by the Managemnet/Office bears not to raise any grievance. In so far as Item 5 is concerned, it is averred that the company is adopting pick and choose policy in the matter of

production norms etc. It is then set out that the Management and the office bearers practice discrimination. The Management is fully aware that the elections are not held and this attracts item 5. The gist of the complaint is basically two fold. Firstly that the office bearers continue in office, inspite of their term having been completed and inspite of the effect that they have not held elections and are therefore, wrongly holding office. Secondly that the Management fully knowing that the office bearers are not legally elected office bearers, are holding negotiations with the Management.

7. On behalf of the Office bearers and Union, President C.R. Acharekar has filed affidavit. Various objections have been taken. It is pointed out that the complaint does not disclose any act amounting to unfair Labour Practice under Items 5, 9 and 10 of Schedule IV. Any dispute between complainant on the one hand and the Union and others on the other, regarding their membership of the Union cannot be resolved under the Provisions of the M.R.T.U. & P.U.L.P. Act, 1971. It is also submitted that in respect of any dispute as to whether persons are office bearers of the Union, complainants have appropriate remedy under the provisions of the Trade Unions Act. It is also pointed out that the Union has signed settlement

dated 20.7.2002 with the Management. Pursuant to the said settlement, even complainants are getting benefits. The settlement is valid and binding till 2005 and there is no question of fresh charter of demand or another settlement before the aforementioned date. In the event there is any breach of settlement by the Management and if the complainant so disclose the office bearers are always ready to take up the issue with the Management. It is then pointed out how the Union functions. Reference is also made to the expulsion of Mr. Dalvi and the procedure followed on 3.7.2004. it is also pointed out that the meeting of the Managing committee was held on 3.7.2004 where one of the Agenda was Elections. By overwhelming majority the Managing committee has appointed committee of seven members. In view of the decision taken by the Managing Committee to hold elections, nothing survives in the complaint. The procedure for electing office bearers has also been set out.

8. The Management has also filed their reply. It is contended that the complainants have no locus standi to file the complaint and only the recognised union can file complaint on behalf of the employees. It is pointed out that the complainants have failed to make out any case or failed to show as to how the Items invoked are

attracted. No case is made out. It is then specifically set out that the allegations by the complainants that settlement provides for norms is blatantly a false statement. There are no norms for production. What is agreed is that every workmen will put in 450 plus 10 minutes of effective work per day measured by study based on MOST. The Management have denied that they have exercised force against any workman. It is also pointed out that the Management have singed settlement with recognised union and would also in the future sign settlement with Union as long as it is a recognized union. It is further set out that they are not concerned with the Elections of the Union etc. It is also set out that the Management have no intention to sign any settlement with the union as there is settlement valid upto 2005.

9. The learned Industrial Court in so far as interim application taken out by the complainant is concerned fixed points for determination and held that the complainants have made out strong prima facie case and further that the balance of convenience lies in favour of the complainant and that the complainants are entitled to interim relief. The entire sum and substance of the discussion proceeds on the footing that the office bearers of the Union have no right to continue as such and that is duty of the Management to check as

to who has the right to represent workers/employees. It is based on the finding that the term of the office of the office bearers have expired, that the directions have been issued.

. In so far as Order below Exh. UA2 and UA 5 here again the learned Industrial Court has proceeded on the footing that the expulsion of Dalvi was not according to Constitution of the Union as also in violation of principles of natural justice and therefore, relief as prayed for.

10. In Writ Petition No. 2760 of 2004 on behalf of the Petitioner, their learned counsel firstly contends that the Industrial Court would have no jurisdiction to entertain and try the complaint and that could only be entertained and decided under the provisions of Section 28A of the Trade Unions Act, 1926. It is next submitted that the act of Unfair Labour Practice under the M.R.T.U. & P.U.L.P. Act has to be an act of unfair labour practice under Schedule IV committed by the employer management. In the instant case, the entire relief sought is in the matter of the Elections. In other words, a dispute between member of an Union. In so far as holding of elections is concerned, without prejudice to the contention that the Industrial Court has no jurisdiction, they have already set into motion the

procedure for holding the elections. Apart from that the Management itself has averred and submitted that considering that settlement is valid upto 2005, they do not propose to enter into a new settlement with the Union and if that be the case, there is no act of unfair labour practice which is subsisting and consequently also no interim relief could be granted. Lastly it is submitted that the Industrial Court could have no powers to direct holding of elections. Reliance is placed on several judgments which will be adverted to in the course of discussion.

. In so far as petition by the Management is concerned, it is submitted that the complaint does not disclose any act of unfair Labour practice committed by the Management. The only relief prayed is in terms of Prayer Clause (c) to the complaint. It is the stand of the management that during the pendency of the settlement, they do not propose to enter into any other settlement with the recognised union and if that be the case, the complaint itself becomes non-maintainable.

. It is next submitted that no interim relief could be granted unless the complainant had made out prima facie case of act of unfair labour practice. In the instant case, it is not made out. At any rate, it is submitted that in the absence of

making out any case of unfair labour practice, the Industrial Court ought not to have granted relief or at any rate made any observations that the Management is in collusion with the Union or office bearers in expelling Mr. Dalvi. It is pointed out that the complainants had joined Mr. Dalvi as respondent in the complaint and as such complaints of acts of unfair labour practice committed by Mr. Dalvi and in these circumstances, Dalvi could not have maintained the application for interim relief as filed by him.

11. On behalf of the Respondent complainants as also Mr. Dalvi, their learned counsel submits that these are interim orders and were based on the material available and the Industrial Court has exercised its jurisdiction. This court in exercise of its extra ordinary jurisdiction should not interfere with the impugned orders. It is next submitted that it is always open to the Industrial Court to exercise powers to direct the Union pursuant to powers conferred on it under Section 20 of the M.R.T.U. & P.U.L.P. Act to direct holding of the elections. In the instant case, it is pointed out admittedly, no elections have been held and in these circumstances, this court ought not to interfere with the impugned orders. Reliance has been placed on judgements which will be adverted to in the course of discussion.

12. From the above, the questions that arises for determination can be summarised as under :

(1) Whether on the facts and material as on record was it open to the Industrial Court to pass interim orders as prayed for and without considering that the complainants had been unable to prima facie make out a case of unfair labour practice either under Item 5, 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act.

(2) Whether considering the provisions of Section 28A of the Trade Unions Act, was it open to the Industrial Court to grant reliefs against the Union, Office bearers in the application for interim relief sought for by the complainants.

(3) Could the Industrial Court grant any relief on the interim relief sought for by Mr. Dalvi after the complainants themselves had averred that Mr. Dalvi was one of the office bearers who was indulging in purposeful acts of unfair labour practice and could the expulsion of Mr. Dalvi be the subject matter of interim order in a complaint where the relief sought for amongst others was against Mr. Dalvi himself.

13. With the above, we may now proceed to dispose

of the contentions. At the threshold as we have noted the main relief sought is against the Management, Union and the Office Bearers is in terms of Prayer Clause (c). Prayer Clause (c) as already adverted to is to set aside any settlement which the company is likely to sign with Respondent Union represented by Respondent No. 4to 12 in W.P. No. 2700 of 2004. In other words, it is not in respect of any act of unfair Labour Practice based on a subsisting settlement but on a apprehension that a settlement is likely to be entered into in the future. The Industrial Court in the impugned order in Paragraph 24 has noted as under :

"So far as the Respondent No. 1 and 2 are concerned, it has been submitted that there is no move or intention to sign any settlement with the Respondent Union as existing settlement is valid upto 2005 and the Respondent Union is a recognised union. The Respondents have made the submissions opposing the claim made by the Complainants in respect of restraining the respondents from signing into the settlement. The learned Counsel for the Respondent No. 1 and 2 has fairly stated at bar that so far as the elections of the Respondent Union are concerned, they have no interest and they have to make no submissions."

. It is thus clear from Paragraph 24 that the

Management has taken a specific stand that they do not propose to enter into any settlement with Respondent Union as long as there is existing settlement period upto 2005. If that be the case, relief as sought for in terms of Prayer Clause (c) would really not be available. The entire substance of the complaint alleging act of unfair labour practice against the Management are based on those allegations. Once the Management against whom the act of unfair Labour Practice has to be established in order to make a case under Item 5, 9, 10 of Schedule IV of M.R.T.U. & P.U.L.P. Act has set out that they do not propose to enter into any settlement as long as the existing settlement subsists untill 2005, the tribunal ought to have come to the conclusion that no prima facie had been made out. The tribunal having proceeded to grant the interim relief, clearly committed an error of law apparent on the face of the record. It is not necessary to refer to any judgement for that purpose as the very basis of granting interim relief is making out a strong prima facie case by the complainants. But if judgments need to be cited, reference may me made to the Judgment of the Division Bench of this Court in B.S.E.S. Limited Vs. Bombay Electric Workers Union and Ors. 2004 III CLR 470 where a learned Division Bench observed that in the absence of recording findings as to existence of a prima facie case, no interim relief

could have been granted. It is no doubt true that the learned counsel for the Respondents relied on the judgement in the case of Paygonda Surgonda Patil Vs. Jingonda Surgonda Patil reported in LXIX 1967 BLR 579 to contend that interference by this court in the exercise of its extra ordinary jurisdiction in a matter of exercise of discretion is not called for unless it is necessary to do so in the interest of justice. My attention was also invited to the judgement in the case of Brooke Bond India Ltd. and Workmen 1981 (II) LLJ 184 to contend that only settlement would be binding if those who sign the settlement on behalf of the Union had due authorisation by the Executive Committee of the Union. This is in the context that the term of the Chairman or Office bearers had come to an end as the last elections were held in the year 1999 and term of office is for one year. My attention was however, invited to Clause 12 of the Constitution of the Union by the Petitioner. It provides that subject to provisions of Section 2 of the Indian Trade Unions Act, 1926, the affairs of the Union financial or otherwise, shall be conducted by the Managing Committee consisting of the Office Bearers and not more than seventy other members elected at the Annual General Meeting. The Managing Committee will continue functioning till a new one is appointed. In other words untill elections are held the Managing Committee will

continue to function. Therefore, in terms of the constitution the office bearers could continue as office bearers till elections were held. The office bearers have entered into a settlement with the management in the year 2002. The benefits of which have been taken by all employees. In my opinion therefore, first contention will have to be rejected.

14. That brings us to the next contention as to whether it is open to the Industrial Court to have issued directions for holding elections as ordered while passing the order at Exh. U2. The learned Industrial Court has referred to various judgments including of this court to hold that it is open; to the Industrial Court including under the M.R.T.U. Act to direct holding of elections. For that purpose we may firstly advert to Section 28A of the Trade Unions Act, 1926 which reads as under :

"28A. Power of Industrial Court to decide certain disputes : (1) Where there is a dispute as respects whether or not any person is an office bearer or member of a registered Trade Union (including any dispute relating to wrongful expulsion of any such office-bearer or member), or where there is any dispute relating to the property (including the account books) of any registered

trade Union, any member or such registered Trade Union for a period of not less than six months, may, with the consent of Registrar and in such manner as may be prescribed, refer the dispute to the Industrial Court constituted under the Bombay Industrial Relations Act, 1946, (Bom.XI of 1947)

for decision."

. A reading of the section would therefore, make it clear that any dispute as to whether any person or office bearers or member of the registered trade union or any dispute relating to expulsion of any such office bearer or member the dispute has to be referred to Industrial Court constituted under the B.I.L.R. Act, 1946. Under Section 28(4) there is exclusion of jurisdiction of the civil court. It is in that context that we must consider the judgements adverted to. Reference was made to the judgement in P.D. Siddhave Vs. G.N. Patwardhan & Ors. 1997 II CLR 1090. If the facts of that case are considered, it would be clear as set out in Paragraph 5 that judgment, that during the pendency of a complaint, the term of office bearers came to an end. The complaint was filed on the ground that the Management was not negotiating with the recognized union. It is in that context and after considering the provisions of Section 32 of M.R.T.U. & P.U.L.P. Act that this court held that there would be power in the Industrial Court as

part of its powers of deciding the main dispute to decide the said issue as to who can represent Union and in that process to issue such directions including holding of elections. It is therefore, clear that if an issue incidental to the main complaint arises only then can direction be issued under Section 22 of M.R.T.U. & P.U.L.P. Act. The ratio in Siddhave cannot by any stretch mean to hold that a complaint on that ground itself would be maintainable. That would not be a complaint of Unfair Labour Practice against the Management but it would be a dispute between members and office bearers. In the instant case, as we have seen the only relief which the complainants are seeking is to restrain the Management and the Office bearers from entering into any new settlement. The stand of the Management was that they do hot propose to enter into any settlement. Once that be the case, there was no question of issuing any direction as prima facie itself there would be no case of unfair Labour practice.

. What the Industrial Court in fact has done and what the complainants sought by the present complaint was to seek direction for holding elections and the method for holding the elections. That clearly was beyond the jurisdiction of the Tribunal. Though the office bearers have set out that they propose to hold elections and that the

exercise commenced in July, 2004, yet in October, 2004 when the matter has been moved before the court, nothing has been shown to point out that substantial progress has been made on that count. The elected office bearers cannot continue in office in gross violation of the byelaws of the Union which contemplates holding of elections. On behalf of the Union and office bearers their learned counsel on taking instructions, makes a statement that the elections will be held within one month from today. Statement made on behalf of the Union and office bearers through their counsel is accepted. One month period would be for the purpose of completing elections of delegates and thereafter further steps in terms of the Constitution of Union, the Office Bearers will be elected after one month of the elections.

15. The last issue is as regards expulsion of Dalvi. Clearly this order was totally without jurisdiction. Dalvi was one of the Respondents against whom complainants had been filed of unfair Labour Practice. In other words reliefs were sought amongst others against Mr. Dalvi. Whatever allegations might have been made against Mr. Dalvi and even if it is the contention of Mr. Dalvi that there is collusion between the Management and the office bearers of the Union, the said relief could not have been entertained in the present complaint

filed by the complainant against office bearers including Dalvi itself. Remedy for Dalvi would be to take independent recourse to law which he will be entitled to under the Trade Unions Act or any other Law which he may be entitled to. The tribunal therefore, has totally exceeded of its jurisdiction in granting the relief to Dalvi on Application Exh. U2 and U5. One thing may be said in passing that if Dalvi files any; application to the Registrar under Section 28A for reference that may be decided expeditiously and not latter than two weeks on applying for reference.

16. In the light of the above, the following order :

. Writ Petition No. 2760 of 2004 is made absolute in terms of Prayer Clause (a). In Writ Petition (L) No. 2762 of 2004, no relief need be given as the impugned order where the observations of collusion were made has been set aside.

. The Union to proceed to hold elections in terms of the statements made to this court and accepted by the court.

. The Registrar on the application made by Mr. Dalvi under Section 28A to dispose of the same within fifteen days of receiving of the reference.

. The learned counsel for the respondents seek stay of the order. In my opinion, no case made out for stay. Application for stay rejected.

(F.I. REBELLO,J.)